

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Telephone Number Portability

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CC Docket No. 95-116  
RM 8535

DOCKET FILE COPY ORIGINAL

COMMENTS OF  
THE NATIONAL COOPERATIVE TELEPHONE ASSOCIATION  
AND  
THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS COMPANIES

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## SUMMARY

NTCA and OPASTCO urge the Commission to adopt number portability cost recovery rules that minimize the burdens placed on small and rural LECs and their customers. The Commission can accomplish this goal by crafting its rules to ensure that all telecommunications providers that benefit from the number portability requirements placed on small incumbent LECs bear the cost burden of those requirements.

The Commission should require that new entrants, among others, contribute to the direct and indirect carrier-specific number portability costs of small incumbent LECs. The Act does not permit the Commission to require that incumbent LECs charge requesting carriers less than reasonable rates under the rubric of "competitive neutrality." There is also no statutory requirement that the Commission depart from traditional cost causation principles so that it can impose on incumbent LECs costs attributable to services purchased by new entrants. Providing portability to requesting competitors will prematurely force many small LECs to make expensive switching software upgrades or even require switch replacement. It would be unfair for the Commission to adopt rules that force rural telephone companies to recover these costs from their remaining customers.

The fact that underlying technologies necessary for providing portability, such as SS7 and AIN, may have other potential uses should have no bearing on the ability of small LECs to recover their costs. The costs related to these investments would not have been made but for the number portability needs of other providers. Thus, it should be all providers benefiting from local portability that bear the network upgrade costs incurred by the small incumbent LEC. Ultimately, the imposition of burdensome requirements that do not provide benefits to rural subscribers will jeopardize universal service unless the Commission ensures that these costs are not thrust on the companies that provide service to them.

The Associations are not opposed to a cost recovery mechanism that allocates the costs of shared facilities in proportion to each carrier's gross "telecommunications revenues" minus charges paid to other carriers. However, some safeguards should be adopted to ensure the proper accounting of the telecommunications and non-telecommunications revenues of carriers. Additionally, only those incumbent rural telephone companies that are subject to local competition requiring number portability should have the obligation of contributing to the cost of shared facilities. LECs not required to provide

portability should not bear this burden since their customers will receive none of the benefits from the databases and other shared facilities. Finally, the Commission should not mandate that service providers impose a number portability charge on their subscribers as Section 251(e) (2) of the 1996 Act requires that the costs of portability are to be borne by carriers, not customers.

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**I. INTRODUCTION**

On July 2, 1996, the Federal Communications Commission (FCC or Commission) released the text of a First Report and Order and Further Notice of Proposed Rulemaking in its docket on telephone number portability.<sup>1</sup> The Report and Order sets out the rules for local exchange carriers' (LECs) provision of number portability as required by the Telecommunications Act of 1996.<sup>2</sup> Following

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<sup>1</sup>In the Matter of Telephone Number Portability, CC Docket No. 95-116, RM 8535, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286 (July 2, 1996). (Order, FNPRM, Notice)

<sup>2</sup>Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), Sec. 251(b)(2). (1996 Act, the Act)

the Report and Order, the FCC has issued a Further Notice of Proposed Rulemaking seeking comment on how carriers may recover the costs of long-term number portability. The National Telephone Cooperative Association (NTCA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) (collectively, "the Associations") hereby submit its comments in response to the Commission's FNPRM.

NTCA and OPASTCO are national trade associations that together represent approximately 800 small LECs serving rural areas of the United States. The costs of implementing and providing long-term number portability will be substantial and the way in which the Commission permits their recovery will have a profound impact on small and rural LECs. Thus, the Associations have a paramount interest in this proceeding.

**II. SMALL INCUMBENT LECs MUST BE ABLE TO RECOVER THEIR CARRIER-SPECIFIC COSTS; COMPETITIVE PROVIDERS SHOULD NOT BE DISMISSED FROM CONTRIBUTING TOWARDS THE INCUMBENT'S COST UNDER THE MANTRA OF "COMPETITIVE NEUTRALITY"**

The Notice requests comment on the recovery of direct carrier-specific costs of long-term number portability, such as switch software upgrades.<sup>3</sup> These costs will be daunting for many small and rural LECs, and it is essential that they are recovered

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<sup>3</sup>FNPRM at paras. 221-225.

from all carriers who will profit from the existence of portability in the local service area.

Competitive LECs, interexchange carriers (IXCs), commercial mobile radio service (CMRS) providers, resellers, and other carriers benefiting from number portability in areas where local competition exists cannot be excused from obligations for the incumbent's costs under the guise of "competitive neutrality" principles. The Commission tentatively concludes that these principles require it to depart from cost causation principles.<sup>4</sup> The Associations disagree with the conclusion that Congress intended such a departure.

Section 251(e)(2) does not eliminate the requirement that interconnection rates, including those for number portability, must be reasonable.<sup>5</sup> The Commission thus cannot interpret "competitive neutrality" to prevent carriers from recovering their cost of providing number portability from the carriers that benefit from it. This would create an unfair playing field by imposing the majority of the costs of portability on incumbent LECs, but with the benefits being realized primarily by its

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<sup>4</sup>Order at para. 131.

<sup>5</sup>1996 Act at Sec. 251(c)(2)(D).

competitors.

Providing number portability to competitors will prematurely force small LECs to make expensive switching software upgrades, and, in some cases, require complete switch replacement. For those rural carriers that have not yet implemented Signaling System 7 (SS7) or Advanced Intelligent Network (AIN), number portability will require the purchase of a full digital upgrade package. Even for those rural LECs with SS7 and AIN technology deployed in their networks, the cost of the software upgrades necessary to provide number portability would be expensive.

Software accounts for the vast majority of the cost of a switch. This is due to the bundled properties of a switch where, in order to acquire the most recent software, LECs are forced to purchase all of the upgrades that preceded it. For example, if number portability capability is made available on generic software number 20, but the LEC's switch contains only up through generic software number 10, the carrier would be required to purchase generic software numbers 11 through 20. In addition, despite the fact that rural LECs typically have small central offices, software costs basically are the same regardless of the number of lines served. The price of software generics and upgrades typically can be in the hundreds of thousands of dollars



and this results in substantially higher costs per line for smaller central offices.

Without a mechanism that allows a small incumbent LEC to recover their costs from the carriers benefiting from portability, these costs may have to be passed onto customers in the form of rate increases, leaving the LEC at a competitive disadvantage. Moreover, if such costs are so considerable that they would cause adverse economic impact on customers or would be unduly economically burdensome, a small LEC may find it necessary to petition its State commission for a suspension or modification of the number portability requirement under Section 251(f)(2) of the Act. The Commission should carefully consider the potential end results when determining how the costs of all network upgrades will be recovered.

**III. NETWORK UPGRADE COSTS SUCH AS SS7 and AIN SHOULD BE RECOVERABLE WHEN IMPLEMENTED FOR THE PURPOSE OF PROVIDING NUMBER PORTABILITY**

In the Notice, the Commission tentatively concludes that there are three types of costs involved in providing long-term service provider portability: (1) the cost of facilities shared by all carriers (e.g. databases); (2) directly related carrier-specific costs (e.g. switch software); and (3) indirectly related carrier-specific costs (e.g. other necessary network upgrades

such as SS7 and AIN).<sup>6</sup> The FCC then goes on to tentatively conclude that the "plain language" of the 1996 Act only allows recovery of the first two types of costs, but not the third.<sup>7</sup> Notwithstanding the FCC's assertion, there is no language in the statute that suggests barring the recovery of the costs of network upgrades necessary for providing portability.

Section 251(e)(2) simply states that the cost of establishing numbering portability shall be borne by all telecommunications carriers. The fact that some of the necessary technologies may have other uses besides portability has no bearing on the permissibility of their costs being recovered under this provision. What is relevant here is that the costs of these network upgrades, regardless of their other functionalities, will be incurred by many carriers at this time for the sole reason of Federally mandated number portability.

The Associations recognize that technologies such as SS7 and AIN have usefulness beyond number portability. However, up until the time when the implementation of number portability was required, many small LECs had not found it economically prudent

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<sup>6</sup>FNPRM at para. 208.

<sup>7</sup>FNPRM at para. 209.

to install these technologies. Even the Commission in its Order recognized that carriers operating in smaller areas will face "more significant network upgrades" than carriers serving urban centers.<sup>8</sup> For a small LEC that has not yet made the business decision to install SS7 or AIN into its network, their costs would have to be incurred prematurely. These costs are substantial and would be burdensome for a small telephone company financially unprepared to make the investment.

When a technology or upgrade is made specifically for meeting the FCC's portability requirement, the line between direct costs vs. indirect costs becomes blurred. What is clear is that the cost causer of these upgrades in either case are the competitive provider(s) that request portability. Thus, it should be all providers benefiting from local portability that bear the network upgrade costs incurred by the small incumbent LEC.

**IV. INCUMBENT SMALL AND RURAL LECS SHOULD NOT HAVE TO CONTRIBUTE TO THE SHARED COSTS OF NUMBER PORTABILITY UNLESS THEY ARE REQUIRED TO PROVIDE IT**

The Notice seeks comment on what carriers should recover the costs of facilities shared by all telecommunications carriers for

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<sup>8</sup>Order at para. 83.

the provision of long-term number portability.<sup>9</sup> When developing the mechanisms for recovering the cost of shared facilities, it is most important that the Commission establish that only those small and rural LECs which face competition requiring portability in their local service area be required to contribute. It would not be reasonable to require small LECs to contribute to the cost of facilities from which they and their subscribers derive no benefit.

Many rural, sparsely populated areas served by small LECs may not face competition for some time to come. Ostensibly, the Commission recognized this difference in its Order when it ruled that LECs serving in areas outside the largest 100 Metropolitan Statistical Areas (MSAs) do not have to incur the costs of long-term portability until after receiving a bona fide request from another carrier.<sup>10</sup> This type of distinction should follow through to the cost of shared facilities. Small LECs not facing competition in their service area should not be burdened with the

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<sup>9</sup>FNPRM at para. 212.

<sup>10</sup>For LECs serving in areas outside the largest 100 MSAs, after December 31, 1998, long-term number portability must be made available within six months after receiving a specific request from another telecommunications carrier. Order at para. 80.

cost of shared facilities until a new market entrant requires portability.

**V. IF A GROSS TELECOMMUNICATIONS REVENUES METHODOLOGY IS USED TO RECOVER THE COSTS OF SHARED FACILITIES, ALL CARRIERS MUST CONTRIBUTE AND A METHOD FOR STANDARDIZING AND AUDITING THE REVENUES ATTRIBUTED TO "TELECOMMUNICATIONS" SHOULD BE DEVELOPED**

The FCC tentatively concludes that the costs of shared facilities should be allocated in proportion to each telecommunications carrier's total gross "telecommunications revenues" minus charges paid to other carriers.<sup>11</sup> In theory, the Associations believe that this method of allocation could be competitively neutral and equitable. However, significant questions that need to be resolved before such a system is implemented are how "telecommunications revenues" will be defined and whether the FCC will be able to detect distortionary measures used by companies with both telecommunications and non-telecommunications businesses.

To illustrate the implication of these issues, take for example a cable company that also provides a range of other services, including local exchange service, over its cable facilities. Without further clarification from the Commission,

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<sup>11</sup>FNPRM at para. 213.

it is unclear to the cable company which of its businesses are to be included in its calculation of "gross telecommunications revenues." Complicating this determination is the cable company's ability to bundle its services, possibly offering consumers steep discounts on local phone service when they also purchase cable service.

For these reasons, if the Commission is to adopt a gross telecommunications revenues methodology, it must first develop a clear definition of what constitutes "telecommunications" in order to maintain comparability in the revenues counted by all carriers subject to the assessment. Second, it must devise a system to monitor companies for aberrations in the revenues reported for their telecommunications and non-telecommunications operations. Assuming this can be accomplished with minimal administrative burdens placed on carriers, the Associations tentatively support a gross revenues method for the cost recovery of shared facilities.

Carriers that should be required to contribute to the recovery of shared facilities costs include all telecommunications service providers in areas where competition exists that receive ported numbers or utilize the database. This would include competitive LECs, IXC's, CMRS providers, and

resellers, among others. Even though some of these carriers may not receive ported numbers, such as IXC's, they still benefit from the use of the database by being able to complete their customers' calls. Including all telecommunications carriers who access the shared facilities or receive ported numbers, regardless of the service(s) they offer, will help to defray the cost for every carrier on an equitable basis.

**VI. AN FCC REQUIREMENT FOR CARRIERS TO RECOVER THE COSTS OF NUMBER PORTABILITY DIRECTLY FROM END USERS WOULD BE AT ODDS WITH SECTION 251(e)(2)**

By referring specifically and only to carriers in Section 251(e)(2), it is evident that Congress intended for service providers, and not subscribers directly, to bear the costs of number portability. The Managers Report of the 1996 Act reinforces Congress' clear intent with regard to Section 251(e)(2) when it states that "the costs for numbering administration and number portability **shall be borne by all providers** on a competitively neutral basis."<sup>12</sup> Nowhere in Section 251(e)(2) or in the Managers Report does it even hint at these costs being paid directly by customers. If the FCC were to require service providers to charge their customers for

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<sup>12</sup>1996 Act, Joint Explanatory Statement of the Committee of Conference, p. 122. (Emphasis added)

portability, carriers would not be bearing these costs.<sup>13</sup>

At a couple of points in the Notice, the Commission seeks comment on direct recovery of the various costs of portability through end users,<sup>14</sup> such as through a charge assessed on customers' bills. This should not even be considered as it belies Congressional intent. While the Commission may permit carriers to collect charges for the portability costs attributable to their subscribers, it may not impose or require LEC collection of end user charges attributable to others' portability requirements.

## **VII. CONCLUSION**

Congress has required all LECs to provide number portability in the belief that it will spur competition and benefit consumers. However, as evidenced by Section 251(f)(2) of the 1996 Act, Congress rightfully had doubts about whether the "benefits" of portability would outweigh its costs in rural areas served by small LECs. If number portability is ever to have its

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<sup>13</sup>The word "borne" is the past participle of the verb "bear." "Bear," in this context, is defined by Websters New World Dictionary, Second Edition, as "to sustain the burden of; take on; take care of."

<sup>14</sup>FNPRM at paras. 215, 222-224.



intended benefits in some rural areas, it is essential that small incumbent LECs are able to recover their costs of providing it.

Respectfully submitted,

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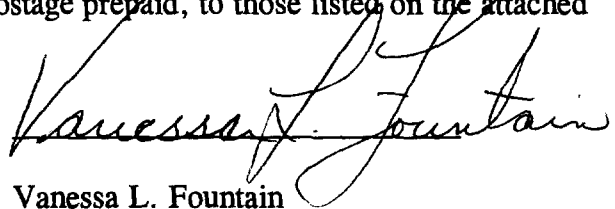
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August 16, 1996

## CERTIFICATE OF SERVICE

I, Vanessa L. Fountain, hereby certify that on this, the 16th day of August, 1996 comments of the National Telephone Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies were either hand-delivered or deposited in the United States mail, first class, postage prepaid, to those listed on the attached sheet.

A handwritten signature in cursive script, reading "Vanessa L. Fountain", written over a horizontal line.

Vanessa L. Fountain

**SERVICE LIST**  
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